



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 5, 2003

Mr. Harold Willard
Police Legal Advisor
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2002-0758

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176515.

The Lubbock Police Department (the "Department") received a request for "all records and reports" concerning two named individuals. You assert the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have reviewed the information you submitted and considered the exceptions you claim.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy. When a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). In this instance, by requesting "all records and reports" of two named individuals, we believe the requestor has asked the Department to compile criminal history information, thereby implicating the individuals' right to privacy. Therefore, we agree the Department must withhold the photographs and documents identified as Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy and *Reporters Committee*.

Additionally, section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information labeled Exhibit C involves juvenile conduct that occurred after September 1, 1997. Based on a review of the submitted information, we find no indications that any of the exceptions in section 58.007 apply. Therefore, section 58.007(c) of the Family Code makes the contents of Exhibit C confidential. Thus, the Department must withhold Exhibit C from the requestor under section 552.101 of the Government Code.

Lastly, with respect to Exhibit D, you claim section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us, and our review of the submitted information confirms, the documents identified as Exhibit D relate to criminal investigations that did not result in convictions or deferred adjudication. Therefore, we agree section 552.108(a)(2) applies to Exhibit D.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), which includes a detailed description of the offense. Thus, with the exception of the basic front page offense and arrest information, the Department

may withhold Exhibit D from disclosure based on section 552.108(a)(2). Also, although Exhibit D contains information generally subject to section 552.130(a) of the Government Code, basic information as described in *Houston Chronicle* does not include the information covered by section 552.130.¹ Therefore, the information covered by section 552.130 is already excepted by section 552.108. The Department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

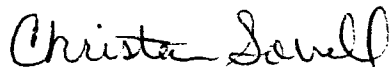
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

¹ Section 552.130 of the Government Code excepts from disclosure information pertaining to certain motor vehicle records. Gov't Code § 552.130.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Christen Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 176515

Enc: Submitted documents

c: Ms. Lisa L. Hauge
Mullin, Hoard, Brown, Langston, Carr, Hunt & Joy, L.L.P.
P.O. Box 2585
Lubbock, Texas 79408-2585
(w/o enclosures)